

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

BAYLEY CONSTRUCTION, a Washington
General Partnership

Plaintiff,

v.

GREAT AMERICAN E&S INSURANCE
COMPANY,

Defendant.

NO.

COMPLAINT FOR
DECLARATORY RELIEF AND
MONETARY DAMAGES

COMES NOW Plaintiff Bayley Construction ("Bayley"), and for its Complaint, states and alleges against Great American E&S Insurance Company ("Great American") as follows:

I. PARTIES

1. Bayley is a Washington General Partnership, duly organized under the laws of the state of Washington. Bayley's home office is located on Mercer Island, and Bayley is a citizen of the state of Washington. Great American is an insurance company which is not a citizen of the state of Washington, but which does business in the state, and more specifically in King County.

6. Under Washington law, Great American was obligated to provide a defense to the underlying claims until it was able to rule out the potential of coverage. It was obligated to consider the four corners of the claim, and was thus in a position to either rule coverage in or out within 30 days specified in WAC 284-30-370. Despite being unable to rule coverage out within 30 days, Great American breached its defense obligation by failing to extend defense benefits as of November 19, 2012. Further, Great American was obligated to provide a defense unless its policy language clearly and unambiguously left no potential for coverage. In point of actual fact, the language upon which Great American relied has not been judicially interpreted, and thus as of the filing of this complaint, it cannot rule out the potential that its policy will be held to provide coverage for the claims Bayley tendered to it. Nevertheless, in violation of its responsibilities under *American Best Food v. ALEA*, Great American is deliberately refusing to extend any of the defense benefits otherwise owed under its policy.

7. Great American was precluded under Washington law from denying Bayley's claim without conducting a reasonable investigation. Great American deliberately failed to investigate predicate facts necessary for reaching a decision on the applicability of the "known loss" and **Responsible Persons** provision of the policy, but included those grounds in its declination letter. These provisions are legally insufficient under *American Best Foods* to justify Great American's refusal to provide defense benefits, as by its own admission, Great American was unable to rule out the potential for coverage on the ground of these provisions as of the issuance of its denial of Bayley's claim. Additionally, Great American

1 failed to investigate the settlement value of the claims against Bayley, failed to communicate
 2 that investigation to Bayley, failed to evaluate reasonable settlement value, and failed to take
 3 efforts to settle the claims against Bayley.

4 **VIII. DAMAGES**

5 8. Bayley has been damaged as a proximate result of Great American's breach of
 6 contract, negligence, breach of duty of good faith dealing, breach of Washington's Consumer
 7 Protection Act, and breach of enhanced obligations of good faith dealing in a reservation of
 8 rights case. Contemporaneously with the filing of this complaint, Bayley is serving notice
 9 under section 8 of Washington's Insurance Fair Conduct Act, and thus reserves the right to
 10 amend this complaint to assert a cause of action under IFCA in the event Great American
 11 declines to provide the remedy requested in that notice.

12 **IX. CLAIM FOR DECLARATORY RELIEF**

13 9. There is a clear and present dispute that exists between Bayley and Great
 14 American concerning statutory and contractual obligations between and among the two.
 15 Bayley seeks declaratory relief resolving issues concerning the respective rights and
 16 obligations of Bayley and Great American respectively.

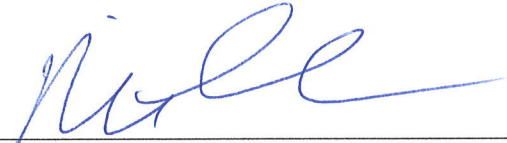
17 WHEREFORE, Plaintiff prays for relief as follows:

- 18 1. For monetary damages in an amount exceeding \$75,000 exclusive of interest
 19 or costs;
- 20 2. For attorneys' fees and other costs pursuant to *Olympic Steamship v.*
 21 *Centennial*, *McGreevy v. Oregon Mutual*, and other applicable law;
- 22 3. For prejudgment interest;
- 23 4. For treble damages as allowed by statute; and

5. For such other and further relief as the court may deem just and equitable.

DATED this 19th day of December, 2012.

ASHBAUGH BEAL

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CONFIRMATION RECEIPT

Case Number: 12-2-40077-6 SEA
Case Title: BAYLEY CONSTRUCTION vs GREAT AMERICAN E&S INSURANCE COMPANY
Submitted By: Richard Skalbania
Bar Number: 17316
User ID: rskalbania
Submitted Date/Time: 12/19/2012 1:07:13 PM
Received Date/Time: 12/19/2012 1:07:13 PM
Payment Reference: 3579611328
Total Cost: \$242.49

DOCUMENTS

Document Type: COMPLAINT
File Name: Complaint.pdf
Cost: \$0.00

Document Type: ORDER SETTING CASE SCHEDULE
File Name: schedule.pdf
Cost: \$0.00

Document Type: CASE INFORMATION COVER SHEET
File Name: cics.pdf
Cost: \$0.00

Document Type: SUMMONS
File Name: Summons (40 Days).pdf
Cost: \$0.00

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